

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

TUNE HUNTER INC.,

Plaintiff,

v.

**SAMSUNG TELECOMMUNICATIONS
AMERICA, LLC, *et al.*,**

Defendants.

CASE NO. 2:09-CV-00148-TJW

JURY TRIAL DEMANDED

**DEFENDANT APPLE INC.'S
MOTION TO DISMISS TUNE HUNTER, INC.'S AMENDED COMPLAINT**

Defendant Apple Inc. (“Apple”) hereby moves to dismiss the First Amended Complaint for Patent Infringement (“Amended Complaint”) filed by plaintiff Tune Hunter Inc. (“Tune Hunter”) for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

Defendants Gracenote, Inc. (“Gracenote”) and LG Electronics USA, Inc. (“LG”) each have filed motions to dismiss Tune Hunter’s Amended Complaint under Rule 12(b)(6). (Docket Nos. 67 and 82, respectively.) As the arguments advanced in Gracenote’s and LG’s motions to dismiss also apply to Tune Hunter’s claims against Apple, and to reduce duplicative briefing before the Court, Apple hereby adopts and incorporates as if fully set forth herein:

- (1) the arguments and authorities advanced in the Amended Motion to Dismiss for Failure to state a Claim by Gracenote, Inc. (Docket No. 67, hereafter “Gracenote’s Motion to Dismiss”); and
- (2) the arguments and authorities advanced in LG Electronics USA, Inc.’s Motion to Dismiss Plaintiff’s First Amended Complaint (Docket No. 82, hereafter “LG’s Motion to Dismiss”), except for Section V, which is unique to LG.

For the reasons articulated in Gracenote's Motion to Dismiss and LG's Motion to Dismiss, Apple respectfully requests that the Court dismiss Tune Hunter's Amended Complaint against Apple, with prejudice, for failure to state a claim upon which relief can be granted.

January 8, 2009

Respectfully submitted,

By: _____/s/ Josh Krevitt

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**ATTORNEYS FOR DEFENDANT
APPLE, INC.**

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document and the proposed order via the Court's CM/ECF system pursuant to Local Rule CV-5(a)(3) on this 8th day of January, 2010.

/s/ Josh Krevitt

Josh Krevitt